

STRATEGIES FOR REIMBURSEMENTS AND CREDITS

Presented by

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STRATEGIES FOR REIMBURSEMENTS AND CREDITS

I. What are Eligible Facilities?

II. Terminology

- a. Reimbursement
- b. Credit

III. Reimbursement Generally

- a. Cash and IOUs.
- b. Credits against related Impact Fees.
- c. Credits against unrelated Impact Fees through interfund borrowing by the agency

IV. Legal Framework

- a. Constitutional basis: The burden has to be reasonable, not necessarily pro-rata.
- b. Subdivision Map Act.
 - i. Government Code section 66483. Storm Drain and Sanitary Sewer. Funds through impact fees include protest provision.
 - ii. Government Code section 66484. Bridges and major thoroughfares funded through impact fees include protest provision.
 - iii. Government Code section 66484.5. Groundwater Recharge. Funded through impact fees includes protest provisions.
 - iv. Government Code section 66485. Generic provision where the developer is required to build supplemental facilities which benefit others. Calls for payment of interest.
 - v. Government Code section 66487. Reimbursement under section 66485.
 - a. A reasonable change.
 - b. Agency contribution.
 - c. Establish and maintain benefit district.
 - vi. Government Code section 66488. Agency may create a benefit basis and impose a charge for storm drain and sewer. (Gov. Code, § 664483.)
 - vii. Government Code section 66489. Agency may create a benefit basis and impose a charge for bridge and major thoroughfare. (Gov. Code, § 664484.)
- c. Zoning Law.
- d. Mitigation Fee Act. (Gov. Code, § 66000 et seq.)
- e. Other State Statutes.
- f. Utilities regulated by the P.U.C.

- g. Local Ordinances, procedures and preferences.

V. The Standard Deal

- a. Maximum Ten year term.
- b. No interest.
- c. Recovery of marginal costs only.
- d. No City/County liability.

VI. Calculating the Scope of Reimbursement

- a. Marginal Cost vs. Pro-rata (fair share).
- b. Who gets paid back first?

VII. When to Speak up

- a. You have to know the local ground rules. Significant diversity exists in local practice. Generally, the earlier the better.
 - i. Project Approval.
 - ii. Installation of improvements.
 - iii. Post acceptance.
 - iv. Development Agreement.
- b. In the absence of local procedures, establish principles for reimbursement at the time of project approval.
 - i. Pro-rata v. marginal cost.
 - ii. Interest (at cost of funds).
- c. Is it ever too late? (Exhibit – City of Calistoga Agreement)

VIII. Working from a Blank Canvas: How to Design a Program from Scratch

- a. Refunding Sources.
 - i. Fees – including accelerated fees.
 - ii. Assessment/Benefit District.
 - iii. Mello Roos Proceeds.
 - iv. Builder bonds.
- b. Prevailing wage and competitive bidding. Labor Code section 1771.
- c. Public bidding is required only when mandated by statute.

IX. Collecting Fees from Others

- a. Peer to Peer.

- i. *Vallejo Development Company v. Beck Development Company, Inc.* (1994) 24 Cal.App.4th 929
- b. City/County District Collection.
 - i. Formal fee programs.
 - ii. Ad Hoc programs.
 - iii. “Show me the Money!” Monitoring the Public Collector.
- c. Regulated utilities: 40 year payback with no interest.

X. Questions

- a. When setting up a program today, do you use current land and construction costs or actual out-of-pocket expenses? What is “reasonable”?
- b. What to do in the field when the agency asks for more work to be done?
 - i. Does agency staff have the authority to bind the agency to reimburse in the future?

XI. Resources

- a. Land Use and CEQA Newsletter - <http://blog.aklandlaw.com>
- b. Real Estate Resources - <http://www.dirtlawyer.com/>
- c. Environmental Law - <http://www.ceres.org>
- d. CEQA - <http://ceres.ca.gov/ceqa/>
- e. American Council of Civil Engineers - <http://www.acec-ca.org>
- f. Solano Press Books – <http://www.solano.com>
- g. Attorney General - <http://ag.ca.gov/opinions/>

XII. Exhibits

- a. City of Lincoln – Fee Credit Agreement
- b. Standard County Agreement for offsite improvements
- c. Calistoga Staff Report
- d. Cresleigh Tracking Sheet
- e. Specific Plan Reimbursement Agreement
- f. East Linda Road Park Fee Report; (download at <http://www.aklandlaw.com/course-materials/>)
- g. Plumas Lake Road Fee Nexus Study; (download at <http://www.aklandlaw.com/course-materials/>)